

Message Text

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TAGS: EFIN, EINV, HA

SUBJECT:DUPONT CARIBBEAN

1. TO ASSIST REVIEW OF DUPONT CARIBBEAN/DON PIERSON
CLAIMS AGAINST GOH WASHINGTON AGENCIES WOULD APPRECIATE
RECEIVING EMBASSY VIEWS ON FOLLOWING LEGAL QUESTIONS.

2. CIVIL PROCEDURE

A. DOES HAITIAN LAW REQUIRE THAT NOTICE BE GIVEN A
DEFENDANT OF THE DATE SET FOR TRIAL? IF SO, HOW MUCH
ADVANCE NOTICE IS NECESSARY IN A SITUATION WHERE THE
DEFENDANT HAS ALREADY BEEN ENJOINED FROM TAKING ANY
ACTION DETRIMENTAL TO THE PLAINTIFF'S INTEREST
PENDING THE OUTCOME OF THE CASE?

B. DO DEFENDANTS IN CIVIL ACTIONS HAVE THE RIGHT TO
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TESTIFY IN PERSON OR TO CALL WITNESSES ON THEIR OWN

BEHALF? DO THEY HAVE THE RIGHT TO CROSS-EXAMINE THE WITNESSES (IF ANY) CALLED BY THE PLAINTIFF AT THE TRIAL HEARING, OR OTHERWISE TO ATTEND THE TAKING AND CHALLENGE THE VALIDITY OF TESTIMONY IN FAVOR OF THE PLAINTIFF PRIOR TO THE FORMAL TRIAL?

C. WHAT RULES, IF ANY, GOVERN THE WEIGHT TO BE ACCORDED PARTICULAR KINDS OF EVIDENCE? IS

OPEN-COURT TESTIMONY ON THE BASIS OF DIRECT KNOWLEDGE PRESUMED TO BE MORE ACCURATE THAN EX PARTE SUBMISSIONS OF, FOR EXAMPLE, HEARSAY EVIDENCE?

3. DAMAGES, RESTITUTION, PERFORMANCE

A. DOES HAITIAN LAW PROVIDE FOR THE RESTITUTION OF BENEFITS CONFERRED AND/OR COSTS INCURRED BY A DEFAULTING PARTY TO AN EXECUTORY CONTRACT (A CONTRACT WHEREBY THE PERFORMANCE OF ONE PARTY THAT IS TO CREATE THE OBLIGATION OF THE OTHER TO PERFORM, AS BY PAYMENT, HAS NOT YET OCCURRED OR IS SUBJECT TO SOME CONTINGENCY)? IF SO, IS SUCH RESTITUTION DEPENDENT UPON SUBSTANTIAL PERFORMANCE BY THE PARTY IN DEFAULT?

B. DOES HAITIAN LAW ADMIT OF A DISTINCT LEGAL DOCTRINE OF "SUBSTANTIAL PERFORMANCE," SUCH THAT A VARIETY OF TECHNICAL BREACHES OF CONTRACT BY ONE PARTY COULD STILL LEAVE THE OTHER PARTY OBLIGATED TO PERFORM, ALBEIT IN ACCORDANCE WITH A LIMITED RIGHT OF SET-OFF FOR PROVABLE DAMAGES?

C. DOES HAITIAN LAW ADMIT OF A PRINCIPLE OF "CURE", OF RESTORATION OF AN ONGOING CONTRACTUAL RELATIONSHIP BY TENDER OF ADEQUATE PERFORMANCE OR RENEWED ASSURANCES OF SUCH PERFORMANCE BY A PARTY TEMPORARILY IN DEFAULT?

D. DOES HAITIAN LAW IMPLY A CONDITION, TO THE EFFECT THAT "TIME IS OF THE ESSENCE," IN ALL EXECUTORY CONTRACTS?

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E. WHAT IS THE STANDARD OF PROOF RESPECTING DAMAGES SUSTAINED BY THE PARTY NOT IN DEFAULT? MUST SUCH DAMAGES BE PLEADED AND PROVED SPECIFICALLY, AGAINST THE SAME BURDEN OF PROOF THAT THE PLAINTIFF MUST OVERCOME TO ESTABLISH HIS RELEASE, THROUGH DEFENDANT'S DEFAULT, FROM ALL FUTURE CONTRACTUAL OBLIGATIONS?

4. IS THE PARTY NOT IN DEFAULT UNDER ANY DUTY TO MITIGATE DAMAGES? MAY THE INJURED PARTY HOLD THE OFFENDING PARTY TO THE PAYMENT OF LOST PROFITS (COMPUTED AS THE PRESENT DISCOUNTED VALUE OF ALL THE FINANCIAL RETURN ANTICIPATED FROM A GIVEN CONTRACT, BUT FOR ITS BREACH) EVEN WHEN A GREAT PART OF SAID PROFITS COULD BE RECOVERED BY PROMPT RECOURSE TO OTHER SUPPLIERS OF COMPARABLE GOODS AND SERVICES? WHAT, IN SHORT, IS THE MEASURE OF DAMAGES?

5. ARE ALL ISSUES OF RESTITUTION AND/OR DAMAGES WHICH ARE NOT RAISED BY EITHER OF THE PARTIES DEEMED TO BE SETTLED BY A JUDGMENT SUMMARILY REJECTING ONE PARTY'S UNSPECIFIED CLAIM TO A DAMAGE AWARD? DOES THE FAILURE OF EITHER PARTY TO OBJECT TO OR APPEAL SUCH SUMMARY JUDICIAL DISPOSITION OF THE DAMAGES/RESTITUTION ISSUE CONSTITUTE A WAIVER OF HIS RIGHT TO ATTACK THAT DISPOSITION COLLATERALLY, IN SOME OTHER FORUM AT SOME OTHER TIME? WHAT, THEN, IS THE LIMIT TO THE HAITIAN DOCTRINE OF RES JUDICATA IN COMMERCIAL DISPUTES? COULD A SUBSTANTIAL "FAIRNESS" ISSUE -- TO WIT, THE QUESTION OF RESTITUTION FOR UNJUST ENRICHMENT OR REIMBURSEMENT FOR REASONABLE, OUT-OF-POCKET EXPENSES -- BE RAISED FOR THE FIRST TIME IN A NEW PROCEEDING SEPARATE FROM THE TRIAL AND APPEAL WHICH ORIGINALLY ESTABLISHED THE EXISTENCE OF A MATERIAL BREACH OF CONTRACT? INGERSOLL

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